

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Defendants.

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JURY DEMAND

I. PARTIES

1.2 The City Defendants admit that the City of Seattle is a municipal corporation in the State of Washington. The City Defendants admit that the Seattle Police Department is part of the City of Seattle. The City Defendants deny any remaining allegations in this paragraph.

1 1.3 The City Defendants admit that defendant Cynthia Whitlatch was, at all relevant times,
2 a Seattle Police Department officer. Except as admitted, denied.

3 1.4 The City Defendants admit the allegations in this paragraph.

4 **II. JURISDICTION AND VENUE**

5 2.1 The City Defendants admit that this case has been removed to the U.S. District Court
6 for the Western District of Washington, which has subject matter jurisdiction over plaintiff's sole
7 federal cause of action under 42 U.S.C. § 1983 for an alleged violation of plaintiff's Fourteenth
8 Amendment rights, and further admits that the Court may elect to assert supplemental jurisdiction over
9 plaintiff's separate state law claims. The City Defendants further admit that venue is proper. Except as
10 admitted, the City Defendants deny the allegations in this paragraph.

11 **III. BACKGROUND FACTS**

12 3.1 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
13 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

14 3.2 The City Defendants deny the allegations contained in this paragraph, except admit that
15 defendant Whitlatch is a Caucasian female.

16 3.3 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
17 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

18 3.4 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
19 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

20 3.5 The City Defendants admit that on the date of plaintiff's arrest, defendant Whitlatch
21 was on duty as a City of Seattle Police Officer and was driving a Seattle Police Department patrol car.
22 Except as admitted, denied.

1 3.6 The City Defendants admit the allegations in this paragraph, except for the allegation
2 that plaintiff was using a golf club as a cane. With regard to that allegation, the City Defendants lack
3 sufficient knowledge to form a belief as to its truth or falsity, and, accordingly, at this time deny the
4 same.

5 3.7 The City Defendants admit that, at some point, defendant Whitlatch turned on the
6 patrol car dashboard camera. The City Defendants lack sufficient knowledge to form a belief as to the
7 truth or falsity of the remaining allegations contained in this paragraph and, accordingly, at this time
8 deny the same.

9 3.8 The City Defendants admit the allegations contained in the first sentence of this
10 paragraph. The City Defendants lack sufficient knowledge as to form a belief as to the truth or falsity
11 of the remaining allegations contained in this paragraph and, accordingly, at this time deny the same.

12 3.9 The City Defendants admit that plaintiff was standing on the northwest corner of 12th
13 Avenue and East Pike Street, and that he was holding a golf club in one hand and something else in the
14 other hand. The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of
15 the remaining allegations contained in this paragraph and, accordingly, at this time deny the same.

16 3.10 The City Defendants admit that defendant Whitlatch parked her patrol car near where
17 plaintiff was standing. The City Defendants lack sufficient knowledge as to form a belief as to the
18 truth or falsity of the remaining allegations contained in this paragraph and, accordingly, at this time
19 deny the same.

20 3.11 The City Defendants admit the allegations contained in this paragraph.

21 3.12 The City Defendants admit that defendant Whitlatch gave multiple commands using
22 varying tones for plaintiff to put the golf club down. The City Defendants deny any remaining
23 allegations or characterizations at this time.

1 3.13 The City Defendants admit that, at some point, plaintiff said something to the effect
2 that the golf club was his. The City Defendants lack sufficient knowledge to form a belief as to the
3 truth or falsity of the remaining allegations contained in this paragraph and, accordingly, at this time
4 deny the same.

5 3.14 The City Defendants admit that defendant Whitlatch gave plaintiff multiple commands
6 to put the golf club down, and that at some point referred to the golf club as a “weapon.” The City
7 Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the remaining
8 allegations and characterizations contained in this paragraph and, accordingly, at this time deny the
9 same.

10 3.15 The City Defendants admit that defendant Whitlatch told plaintiff that he was being
11 audio and video recorded. The City Defendants lack sufficient knowledge to form a belief as to the
12 truth or falsity of the remaining allegations and characterizations contained in this paragraph and,
13 accordingly, at this time deny the same.

14 3.16 The City Defendants admit that defendant Whitlatch repeatedly told plaintiff to put his
15 golf club down, that plaintiff told her to call somebody, and that defendant Whitlatch told him that she
16 was calling someone. The City Defendants lack sufficient knowledge to form a belief as to the truth or
17 falsity of the remaining allegations contained in this paragraph and, accordingly, at this time deny the
18 same.

19 3.17 The City Defendants admit that, at some point, defendant Whitlatch walked around the
20 front of her patrol car in the direction of where plaintiff had been previously standing. The City
21 Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the remaining
22 allegations contained in this paragraph and, accordingly, at this time deny the same.
23

1 3.18 The City Defendants admit that plaintiff handed his golf club to Officer Christopher
2 Coles. The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the
3 remaining allegations contained in this paragraph and, accordingly, at this time deny the same.

4 3.19 The City Defendants admit that Officer Coles pat frisked plaintiff for weapons and did
5 not locate any weapons during that search. The City Defendants lack sufficient knowledge to form a
6 belief as to the truth or falsity of the remaining allegations contained in this paragraph and,
7 accordingly, at this time deny the same.

8 3.20 The City Defendants admit that plaintiff was handcuffed and placed under arrest for
9 obstructing a public officer and harassment. The City Defendants lack sufficient knowledge to form a
10 belief as to the truth or falsity of the remaining allegations contained in this paragraph and,
11 accordingly, at this time deny the same.

12 3.21 The City Defendants admit that plaintiff was transported to the East Precinct by Officer
13 Coles and Officer Benjamin Archer and that plaintiff was handcuffed during that time. The City
14 Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the remaining
15 allegations contained in this paragraph and, accordingly, at this time deny the same.

16 3.22 The City Defendants admit that Sergeant Joe Lam conducted the arrest screening for
17 plaintiff. The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the
18 remaining allegations contained in this paragraph and, accordingly, at this time deny the same.

19 3.23 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
20 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

21 3.24 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
22 of the allegations contained in this paragraph and, accordingly, at this time deny the same.
23

1 3.25 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
2 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

3 3.26 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
4 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

5 3.27 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
6 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

7 3.28 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
8 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

9 3.29 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
10 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

11 3.30 The City Defendants admit that on July 21, 2014, defendant Whitlatch wrote an email
12 to Barbara Serrano in which she stated, “As far as obstruction cases go this guy was one of the most
13 obstinate, uncooperative, and obstructive suspects I’ve dealt with in my 17+ years in patrol.” The City
14 Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the remaining
15 allegations contained in this paragraph and, accordingly, at this time deny the same.

16 3.31 The City Defendants admit that on July 22, 2014, Assistant City Prosecutor John
17 Mason wrote an email to defendant Whitlatch in which he indicated that plaintiff was not charged with
18 obstruction due to, among other factors, plaintiff’s age and his use of the golf club as a cane.

19 3.32 The City Defendants admit that plaintiff entered into a conditional discontinuance and
20 that, subject to that discontinuance, the charges against plaintiff were dismissed on September 19,
21 2014. The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the
22 allegations contained in this paragraph and, accordingly, at this time deny the same.

1 3.33 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
2 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

3 3.34 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
4 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

5 3.35 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
6 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

7 3.36 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
8 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

9 3.37 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
10 of the allegations contained in this paragraph and, accordingly, at this time deny the same.

11 3.38 The allegations stated in this paragraph are conclusions of law, not averments of fact
12 warranting a response. To the degree any response is warranted, the City Defendants deny the same at
13 this time.

14 3.39 The allegations stated in this paragraph are conclusions of law, not averments of fact
15 warranting a response. To the degree any response is warranted, the City Defendants deny the same at
16 this time.

17 3.40 The allegations stated in this paragraph are conclusions of law, not averments of fact
18 warranting a response. To the degree any response is warranted, the City Defendants deny the same at
19 this time.

20 3.41 The allegations stated in this paragraph are conclusions of law, not averments of fact
21 warranting a response. To the degree any response is warranted, the City Defendants deny the same at
22 this time.
23

3.42 The allegations stated in this paragraph are conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

3.43 The allegations stated in this paragraph are conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

3.44 The allegations stated in this paragraph are conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

3.45 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same.

3.46 The allegations stated in this paragraph are conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

3.47 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same admit the allegations contained in this paragraph.

IV. CAUSES OF ACTION

4.1 The City Defendants re-allege and incorporate all proceeding paragraphs.

4.2 The allegations stated in this paragraph are conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

1 4.3 The allegations stated in this paragraph are conclusions of law, not averments of fact
2 warranting a response. To the degree any response is warranted, the City Defendants deny the same at
3 this time.

4 4.4 The allegations stated in this paragraph are conclusions of law, not averments of fact
5 warranting a response. To the degree any response is warranted, the City Defendants deny the same at
6 this time.

7 4.5 The allegations stated in this paragraph are conclusions of law, not averments of fact
8 warranting a response. To the degree any response is warranted, the City Defendants deny the same at
9 this time.

10 4.6 The allegations stated in this paragraph are conclusions of law, not averments of fact
11 warranting a response. To the degree any response is warranted, the City Defendants deny the same at
12 this time.

13 4.7 The allegations stated in this paragraph are conclusions of law, not averments of fact
14 warranting a response. To the degree any response is warranted, the City Defendants deny the same at
15 this time.

16 **V. RELIEF REQUESTED**

17 5.1 The City Defendants re-allege and incorporate all proceeding paragraphs.

18 5.2 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity
19 of the allegations contained in this paragraph, except deny any allegation of wrongful conduct on the
20 part of the City Defendants.

21 5.2(a)-(h) The City Defendants deny that plaintiff is entitled to any of the relief sought in
22 these sections.
23

THE CITY DEFENDANTS' AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim against the City Defendants upon which relief may be granted.

2. The City, a municipal corporation, is immune from liability for prejudgment interest on tort judgments and is immune from punitive damages.

3. The Seattle Police Department is not a suable entity.

4. The City Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of Washington or any political subdivision thereof.

5. At all times relevant to the acts alleged in the Amended Complaint, the duties and functions of the City Defendants' officials entailed the reasonable exercise of proper and lawful discretion.

6. Any injury alleged to have been sustained was not the proximate result of any act or failure to act of the City Defendants.

7. Plaintiff has a duty to mitigate his damages. To the extent plaintiff has failed to mitigate his damages, any recovery must be reduced.

8. The City Defendants reserve the right to assert additional affirmative defenses as may be warranted by further discovery.

JURY TRIAL DEMAND

The City Defendants respectfully demand a trial by jury of all issues so triable.

WHEREFORE, the City Defendants respectfully request that Plaintiff's Amended Complaint be dismissed with prejudice, that they be awarded costs and reasonable attorneys' fees herein, and that they be granted such other and further relief as the Court finds just and equitable.

DATED this 30th day of November, 2015.

PETER S. HOLMES
Seattle City Attorney

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CERTIFICATE OF SERVICE

I certify that on the 30th day of November, 2015, I electronically filed this document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

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DATED this 30th day of November, 2015, at Seattle, King County, Washington.

/s/Andrew Myerberg
Andrew Myerberg
Assistant City Attorney